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# Report of the Working Group on Arbitrary Detention

**Addendum**

## Mission to Greece*

*Summary*

The Working Group on Arbitrary Detention undertook a visit to Greece from 21 to 31 January 2013.

In the present report, the Working Group commends the Government of Greece for a number of positive initiatives, particularly legislative reforms, to improve the situation of deprivation of liberty. It found positive developments in, inter alia, the area of migration and asylum. The Working Group also notes the work carried out by the police and the Hellenic Coast Guard in combating trafficking in human beings.

During its visit, the Working Group found that the legislative developments were not always followed by effective implementation in practice.

With regard to criminal justice, there is a constitutional provision that establishes that pretrial detention may not exceed a period of one year in the case of felonies and six months in the case of misdemeanours. The Working Group, however, observed the relatively long periods spent by the accused in pretrial detention, sometimes several years. This is one of the main reasons for the serious overcrowding in Greek prisons, which has intensified and is now a chronic problem.

The border shared with Turkey is currently one of the main points of irregular border crossings into Europe, in large part owing to its geographical location, at the

* The summary of the present report is circulated in all official languages. The report itself, which is annexed to the summary, is circulated in the language of submission only.

south-east border of the European Union, and its proximity to countries that are, or have been, experiencing serious conflict. The Working Group found that up to 90 per cent of undocumented migrants from Asia and Africa enter the European Union via Greece. Concerning the situation of migrants in Greece, it notes that many of them are in a semi-legal status, holding expired residency permits while going through the process of renewal.

The Working Group noted with concern the policy of the Government of Greece of systematically detaining all irregular migrants detected entering Greek territory, including families and unaccompanied minors. It highlights the excessive duration of detention of both irregular migrants and asylum seekers for up to 18 months if the person refuses to cooperate or if there are delays in obtaining the necessary documentation. In many instances, refusal to cooperate or the delays in obtaining necessary documentation could not be attributed to the migrant in question but rather to the consular authorities, or to legal or practical obstacles.

The Working Group points out that the non-application of alternatives to detention, lack of effective judicial review, and the excessive length of detention may render the detention of an individual arbitrary.

In most detention facilities visited by the Working Group, conditions were well below international human rights standards, including in terms of severe overcrowding. In detention centres for asylum seekers, the conditions are often appalling and unhygienic, and facilities were in a poor state of repair.

During its visit, the Working Group also learned about numerous round-up operations where the police would detain foreigners and members of the Roma community who are Greek citizens and release them soon after without charge. In this regard, the Working Group recalls that any detention on discriminatory grounds constitutes arbitrary detention, and furthermore, that detention without any legal basis also renders the detention arbitrary.

## Annex

*[English only]*

# Report of the Working Group on Arbitrary Detention on its visit to Greece

## Contents


| | | *Paragraphs* | *Page* |
|---|---|---|---|
| I. | Introduction | 1 – 3 | 4 |
| II. | Programme of the visit | 4 – 9 | 4 |
| III. | Institutional and legal frameworks | 10 – 41 | 5 |
| | A. Political, administrative and judicial structure | 10 – 16 | 5 |
| | B. International human rights obligations | 17 – 20 | 5 |
| | C. National legislation | 21 – 22 | 6 |
| | D. Judicial guarantees | 23 – 27 | 6 |
| | E. Deprivation of liberty of mentally ill persons | 28 – 30 | 7 |
| | F. General background on migration | 31 – 41 | 7 |
| IV. | Findings | 42 – 108 | 9 |
| | A. Positive aspects | 42 – 45 | 9 |
| | B. Criminal justice | 46 – 60 | 9 |
| | C. Detention of migrants in an irregular situation | 61 – 80 | 10 |
| | D. Detention conditions | 81 – 92 | 14 |
| | E. Procedural safeguards | 93 – 102 | 15 |
| | F. Alternatives to detention | 103 | 17 |
| | G. Unaccompanied minors | 104 – 107 | 17 |
| | H. Conscientious objection | 108 | 17 |
| V. | Conclusions | 109 – 117 | 18 |
| VI. | Recommendations | 118 – 134 | 19 |

# I. Introduction

1. The Working Group on Arbitrary Detention conducted an official visit to Greece from 21 to 31 January 2013, following an invitation received from the Government. The delegation was composed of Mads Andenas (Norway) and Vladimir Tochilovsky (Ukraine). The members of the Working Group were accompanied by the Secretary of the Working Group, another staff member of the Office of the United Nations High Commissioner for Human Rights (OHCHR) and two interpreters.

2. The Working Group thanks the Government of Greece for its invitation to the Working Group and for its full cooperation throughout the visit. It also thanks the Office of the United Nations High Commissioner for Refugees (UNHCR) and the representatives of Greek civil society for their support during the visit.

3. Throughout the visit and in all respects, the Working Group enjoyed the fullest cooperation of the Government and all authorities contacted, which provided the delegation with all the information required and arranged all the meetings it requested.

# II. Programme of the visit

4. The Working Group held various meetings with representatives of the State, and expresses its appreciation for the valuable information they provided. It met with senior authorities from the executive, legislative and judicial branches of the State, including the Minister for Public Order and Citizens' Protection, the Alternate Minister of the Interior, the Deputy Minister for National Defence, the Secretary-General for Anti-Crime Policy of the Ministry of Justice, Transparency and Human Rights, the Director of the First Reception Service, the Chief of the Hellenic Coast Guard of the Ministry of Shipping, Maritime Affairs and the Aegean; the Head of the Legal Department of the Ministry of Foreign Affairs, the Head of the Department on Protection of Refugees and Asylum of the Ministry of Labour, Social Security and Welfare, and senior officials of various ministries and local authorities on the Aegean island of Samos, in Orestiada and in Thessaloniki.

5. The Working Group also met with Members of Parliament, the Ombudsman, representatives of the National Commission for Human Rights, and representatives of bar associations, international organizations and Greek civil society.

6. With regard to the judiciary, the Working Group met with a Magistrate of the Supreme Court of Civil and Penal Law (Areios Paghos), the Vice-Public Prosecutor of the Supreme Court of Civil and Penal Law, the President of the High Court of Athens, the Head of the Public Prosecutors Office of the High Court of Athens, the Vice-Public Prosecutor of the Court of Appeals of Athens and with first instance judges and prosecutors.

7. The Working Group visited a number of places where persons are deprived of their liberty. It visited the Korydallos Prison, including its psychiatric ward, in Athens, the local prison of Thessaloniki and the Komotini Prison in the Rodopi regional unit, as well as police holding cells in Athens, on the island of Samos, in Alexandroupolis and Orestiada. It also visited a number of detention facilities for irregular migrants and asylum seekers, including Thessaloniki Detention Centre, Filakio Detention Centre and Soufli Border Guard Station in the Evros region bordering Turkey, and Komotini Detention Centre in the neighbouring Rodopi regional unit. It further met with and interviewed detainees in all above-mentioned facilities, in private and without the presence of guards or witnesses.

8. The Working Group points out that it was allowed to visit all places of detention that it had requested.

9. The Working Group also met with representatives of United Nations agencies. The visit concluded with a debriefing with the Government on the preliminary observations of the Working Group, and a press conference.

# III. Institutional and legal frameworks

## A. Political, administrative and judicial structure

10. Greece is a constitutional republic based on a parliamentary democracy and on the principle of separation of powers. Its 300-seat Parliament (Vouli) is unicameral.

11. The country has a solid judiciary, composed of independent magistrates and judges. The Constitution guarantees the independence of judges and prosecutors. The judicial system consists of three levels of criminal courts - first instance judges (divided into misdemeanour and felony divisions), appeals courts and the Supreme Court of Justice – as well as three levels of civil courts - first instance judges, appeals courts and the Supreme Court of Justice - and an examining magistrate system.

12. There is a military jurisdiction, not only for military offences, but for any offence against the Penal Code, the Military Penal Code or any special penal legislation committed by a member of the armed forces (army, navy or air force), including the coast guard. It is composed of military judges and military prosecutors. Defence lawyers are civilians. Sentences issued by military courts are served in civilian prisons.

13. The Ministry of Justice, Transparency and Human Rights is responsible for the correctional system. All police forces are under the authority of the Ministry of Public Order and Citizens' Protection and the Ministry of Justice are also responsible for the protection of migrants.

14. The Greek Ombudsman and the National Commission for Human Rights are mandated to protect and promote human rights. There are five deputy ombudsmen at the Ombudsman's office: one for human rights; one for children's rights; one for health care and social welfare; one for State-citizen relations; and one for quality of life issues.

15. The National Commission for Human Rights, created in 1998, is an independent advisory body directly subject to the Prime Minister, operating in accordance with the Paris Principles. It has "A" status accreditation with the International Coordinating Committee of National Human Rights Institutions. The Commission is composed of representatives of labour unions, political parties civil society organizations and of six ministries. Committee members are requested to, inter alia, submit comments on bills.

16. The Prison Inspectorate is a semi-autonomous body headed by a judge that inspects prisons and makes recommendations.

## B. International human rights obligations

17. According to article 28, paragraph 1 of the Constitution, international treaties ratified by Greece are an integral part of domestic Greek law, and have precedence over any conflicting provision of the law.

18. With regard to the protection of human rights, Greece has ratified most of the major international human rights instruments, including the International Covenant on Civil and

Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Optional Protocol thereto.

19. Greece is also a party to the Convention on the Rights of the Child, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto. It is not a party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the International Convention for the Protection of All Persons from Forced Disappearance, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights or the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

20. Greece has adhered to the Convention on the Prevention and Punishment of the Crime of Genocide, the Convention relating to the Status of Refugees and the Protocol thereto, the Convention relating to the Status of Stateless Persons, the Geneva Conventions and the Protocols additional thereto, the fundamental conventions of the International Labour Organization, the Rome Statute of the International Criminal Court and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

## C. National legislation

21. The Constitution guarantees respect for and protection of the value of the human being (art. 2); full protection of life, honour and liberty, irrespective of nationality, race or language, religious or political beliefs for all persons living within Greek territory (art. 5, para. 2); and the inviolability of personal liberty (art. 5, para. 3). Furthermore, the Constitution provides for freedom of opinion, expression, speech and the press.

22. The Constitution prohibits torture, any bodily maltreatment, impairment of health or the use of psychological violence, and any other offence against human dignity, which is punishable as provided by law (art. 7, para. 2). Every person is entitled to receive legal protection by the courts and may plead before them his or her views concerning personal rights or interests, as specified by law (art. 20, para. 1). The right of a person to a prior hearing also applies in any administrative action or measure adopted at the expense of the person's rights or interests (art. 20, para. 2).

## D. Judicial guarantees

23. The Constitution prohibits arbitrary arrest and detention: no person may be arrested or imprisoned without a reasoned judicial warrant, which must be served at the moment of arrest or detention pending trial, except when caught in the act of committing a crime (art. 6, para. 1). The Constitution also guarantees respect for the right to a fair trial.

24. Trials are public, although judges may order restrictions on press coverage. Defendants have the right to counsel. Strict rules of evidence apply in court, and witnesses are subject to cross examination. Bail is sometimes available for those who have committed minor offences, including minor drug offences. Depending on the seriousness of the offence, a detainee may be held in remand for up to one year. Detainees are not allowed to make or receive telephone calls, but may write and receive letters. They are allowed one visit a week, and have unlimited access to their defence lawyer.

25. Defendants enjoy the presumption of innocence and may appeal a court decision to a higher court. Juries are generally used in felony cases, although the law allows for the denial of the right to a jury in cases of violent terrorism. Defendants may present witnesses

and evidence on their behalf, and question witnesses testifying against them. They have access to evidence relevant to their cases held by the authorities .

26. According to article 87 of the Penal Code and article 371.4 of the Criminal Procedural Code, the term of pretrial detention and the time between the arrest and the order of pretrial detention is deducted from the sentence.

27. Persons who have been detained on remand and subsequently acquitted are entitled to request compensation if it has been established in the proceedings that they did not commit the criminal offence for which they were detained (Criminal Procedure Code, art. 533.2).

## E. Deprivation of liberty of mentally ill persons

28. A specific and complete legislative framework is in force that allows for involuntary placements in psychiatric institutions (law 2071/1992, arts. 96 to 99). A programme on mental health reform, initiated in 1994, had the main outcome of abolishing most psychiatric institutions. Most chronic patients now live in small residences across the country. Psychiatric units are integrated into general hospitals.

29. The number of involuntary placement in psychiatric institutions has, however, dramatically increased in recent years, mainly as a consequence of the economic and financial crisis.

30. Patients may only be interned in psychiatric institutions by order of a judge. Judges must support their decision on the basis of an analysis conducted jointly by an external psychiatrist and a medical doctor from the psychiatric institution. According to law, the detention is to be reviewed every two years, although this rarely occurs in practice. The patient may only leave the institution when a release order has been issued by a judge. Patients whose treatment has been completed receive follow-up attention from their doctors.

## F. General background on migration

31. Greece has 18,000 km of coast and 9,000 islands. Its border with Turkey is currently one of the main points of irregular border crossings into Europe, in large part due to its geographical location, at the south-east border of the European Union, and its proximity with countries that are, or have been, experiencing serious conflict. It is estimated that up to 90 per cent of undocumented migrants from Asia and Africa enter the European Union via Greece. In 2012, 421 people were put in detention in a single day for having illegally crossed the border. A barbed wire fence was subsequently built along 12.5 km of the country's mainland borders with Turkey in the Prefecture of Evros.

32. Since the visit of the Working Group to Greece, the European Union has agreed on new rules; for example, Regulation 604/2013 came into force on 1 January 2014. The regulation maintains the main criteria for defining the Member State responsible for examining an application for international protection, and therefore continues to overburden the Greek asylum system.

33. From 1 August to 31 December 2012, 3,280 immigrants and 38 traffickers were detained at the eastern sea borders. Some 1,528 were from Afghanistan and 1,067 from the Syrian Arab Republic. In the Evros region, 36,000 people entered Greek territory illegally in 2010, an increase over the 28,000 in 2011 and the 23,000 in 2012.

34. Persons detained for illegal entry into Greek territory are subjected to screening by the police force, with the support of the European agency Frontex, in order to establish their identity and country of origin, and to take photographs and fingerprints. They are subjected to a medical examination and, according to the laws of the European Union and of Greece, are informed about their rights. The police force concentrates its efforts on dismantling traffic networks.

35. Law No. 3386/2005 governs migration, regulating the entry, residence and social integration of third-country nationals in Greece, as well as issues raised by migrants entering in an irregular situation. According to article 83.1 of the law, illegal entry is a criminal offence punishable by imprisonment of at least three months and a fine of at least €1,500. Law No. 3907/2011 was promulgated to simplify the repatriation procedures of those already in Greek territory. According to the Government, national legislation is aligned fully with European Union laws and directives.

36. With regard to the situation of migrants in Greece, the Working Group was informed that many of them had semi-legal status, holding expired residency permits while undergoing the process of permit renewal.

37. At the time of the visit by the Working Group, no fair and effective asylum determination procedures system was in place. Since the visit, however, the asylum system has undergone many changes. A new asylum service and an appeals authority were established under Law No. 3907/2011, which came into force on 26 January 2011. The Law provides for the establishment of a first reception service and the adaptation of national legislation to European Union Directive 2008/115/EC on the return of irregular migrants. The Government reported that the new asylum service, the appeals authority and the first reception service are now fully operational. The n asylum service, which commenced its activities on 7 June 2013, is the first autonomous facility in Greece to be in charge of examining international protection claims. It comprises a central office, in Athens, and 13 regional asylum offices.

38. The Working Group was informed that, at the Attika Police Directorate in Athens, only 20 applications for asylum a week were registered by the authorities.

39. During the summer of 2012, Greece launched operation Aspida ("shield") on the land border with Turkey, and operation Xenios Zeus, a crackdown on irregular migrants residing in Athens and elsewhere. The sweep operations in the context of operation Xenios Zeus had led to mass arrests and detention, including of migrants in a regular situation and others who had been living and working in Greece for several years. The Working Group also learned that the police had detained members of the Roma community with Greek citizenship in the course of such operations, and had released them soon after without charge. In this regard, the Working Group recalls that any detention on discriminatory grounds constitutes arbitrary detention, and that detention without any legal basis also renders the detention arbitrary.

40. According to the Government, the above-mentioned police operations had had a positive impact on the protection of the human rights of those irregularly entering and residing in Greece, since they allowed the police and other relevant services to evaluate and handle more effectively the needs of immigrants in an irregular situation, and to offer them shelter in places with decent conditions while their cases were being examined.

41. Although the Government considers that the exact number of those who reside illegally in Greece cannot be estimated, other sources estimate that there are around 470,000 migrants in an irregular situation living in the country. For the overwhelming majority, Greece is not their final destination, but merely their point of entry to the European Union and the Schengen zone. Many irregular migrants had, however, remained in Greece because they were prevented from moving on to other European countries owing

to European Union regulations. The Dublin system prohibited any improvement of balancing the protection of asylum seekers and the burden put on Member States. While Regulation 604/2013 is considered a pivotal moment for having established the Common European Asylum System, how the responsibility for refugee protection is shifted from the southern and eastern regions of the European Union to other Member States remains to be seen.

# IV. Findings

## A. Positive aspects

42. The Working Group commends the Government of Greece for the positive efforts it has made, particularly through legislative reforms, to improve the situation of deprivation of liberty in Greece. In the area of migration and asylum, such positive initiatives include, in particular, the adoption of Presidential Decree No. 114/2010 amending the previous legislation on the asylum procedure, and setting, for a transitional period, appropriate standards and safeguards for the fair and efficient examination of applications for asylum; and the adoption of a comprehensive law (No. 3907/2011) providing for the establishment of a new asylum service independent of the police, to take over gradually full responsibility for asylum issues.

43. In 2011, a new first reception service was established as an autonomous body reporting to the Ministry of Public Order and Citizens' Protection. Its main task is to establish first reception centres at the borders according to international standards. When undocumented migrants arrive in the country, the service prepares a needs assessment; migrants are identified, and their origin and nationality determined. All persons are arriving are sorted into a pre-established category; asylum seekers are identified then registered. New arrivals will be informed on their lodgings, and their rights and duties. Undocumented migrants stay at the first reception centres solely for a short period only (a maximum of 15 days, with the possible extension of 10 days).

44. The Working Group also notes the work carried out by the police and the Hellenic Coast Guard in combating trafficking in human beings.

45. Despite these positive achievements, the Working Group notes a number of issues that are of particular concern and draw the Government's attention to them. In the course of its visit, the Working Group found that legislative developments are not always followed up by effective implementation in practice.

## B. Criminal justice

46. The Constitution requires a judicial warrant for an arrest, except when it is made during the commission of a crime (*in flagrante delicto*). This provision is usually respected. The law also prohibits arbitrary arrest orders.

47. The police are responsible for law enforcement and maintaining order. They are required to bring detainees before an examining magistrate within 24 hours. The magistrate has a maximum of 72 hours to issue a detention warrant or to order the detainee's release, unless special circumstances justify a two-day extension of the time limit.

48. Article 18 of the Penal Code divides offences into felonies, misdemeanours and petty offences. In general terms, felonies are punished with penitentiary sentences,

misdemeanours with correctional punishment and petty offences by fines or pecuniary penalties.

49. Offences are prosecuted exclusively by the public prosecutor. In the case of a felony, the public prosecutor orders an investigation, which is carried out by an investigating judge. In the case of a misdemeanour, the public prosecutor orders a preliminary summary investigation, carried out by an investigating official. A direct call to appear before the court is provided for petty offences.

50. Article 6, paragraph 4 of the Constitution establishes that pretrial detention may not exceed a period of one year in the case of felonies and six months in the case of misdemeanours. In exceptional cases, the maximum duration may be extended by six (if the sanction is 20 years of imprisonment or more) or three months, respectively. The article also provides that exceeding the maximum duration of detention pending trial by successive application of this measure for separate acts referring to the same case is prohibited.

51. A panel of judges may release detainees pending trial, either with or without bail. The Working Group observed, however, relatively long periods spent by the accused in pretrial detention, sometimes as much as several years, despite the above-mentioned constitutional provision. Courts are reportedly overburdened and understaffed. Many judges call work stoppages to protest against salary and pension cuts, which further increases the backlog. Lawyers complained before the Working Group that judges make excessive use of pretrial detention, which is often too long. The Working Group found that pretrial detainees made up 31 per cent of those incarcerated. With regard to the police, a report issued in 2010 by the Internal Affairs Unit noted an increase in corruption cases.

52. According to the practice of the Working Group, the non-application of alternatives to detention, lack of effective judicial review, and the excessive length of detention may render the detention of an individual arbitrary. The Working Group was informed that, although alternative sentencing for non-violent offenders was available, courts did not use their prerogative.

53. Defendants have the right to legal counsel. In felony cases, the bar association is to provide defendants with a lawyer if they prove that they cannot afford legal counsel. Defendants brought to court on the day following the alleged commission of a misdemeanour may be tried immediately under an expedited procedure. Legal safeguards, including representation by legal counsel, apply in such procedures; however, the Working Group received allegations that such procedures may undermine the basic rights of defendants owing to the brevity and rapidity of the trial. The Working Group received information that the short time available limits the ability of defendants to present an adequate defence. Government-held evidence is not made available consistently. In addition, the law imposes excessive restrictions on appeals.

54. According to the provisions of the national legislation, the presence of a lawyer is required by law at every stage of a penal procedure. The Working Group, however, received allegations that police agents often fail to inform detainees about their rights to contact family members and to consult a lawyer of their choice. Police officers often question suspects without giving them access to legal counsel.

55. Free legal defence is guaranteed for penal and civil cases, but not for administrative ones. Lawyers complained that the fees were very low, sometimes not compensating for their travel expenses, and that they were paid with considerable delay.

56. National law provides for proper safeguards for persons charged with criminal offences at the pretrial stage. Article 33 of Ministerial Decree No. 58819/7.4.2003 stipulates the procedures followed whenever a detainee cannot afford to exercise her or his right to a defence. The Working Group, however, found serious discrepancies between the

legal requirements and the actual application of some of these safeguards. For instance, according to national law, anyone charged with a felony has the right to have assigned legal assistance without payment, if the person charged does not have sufficient means to pay for it. In felony cases, the bar association is to provide the defendants who prove that they cannot afford legal counsel with a lawyer. Most detainees indeed indicated that they did not have a lawyer because they could not afford one. Very few were aware of the right to free legal assistance.

57. A number of detainees who had chosen to engage a lawyer at their own expense complained that the lawyers simply took their money (between €200 and €600) then disappeared. Information leaflets on the rights of detainees found in detention facilities were very vague and referred only to the detainee's right to contact a lawyer.

58. The presence of an interpreter is legislated. According to the Government, efforts were being made to cover the needs of interpretation in all relevant services by interpreters appointed either by the State or by non-governmental organizations. The Working Group, however, received complaints from foreigners that they did not have access to a court-appointed interpreter.

59. The Working Group noted with particular concern the situation of detainees after round-up operations carried out by police raids in the streets and public places. In many cases, these individuals had been arrested following a racial profile; they were not informed about their rights or about the reason for their detention. In police stations, they were not entitled to inform their relatives or to contact a defence lawyer.

60. The Working Group also received allegations that Roma experienced difficulties in gaining access to justice, and faced long delays in civil cases. Some Roma alleged having been victim of discriminatory attitudes and language directed against them in court.

## C. Detention of migrants in an irregular situation

61. The detention of migrants is regulated by Law No. 3386/2005, in the case of those detained upon entry at an external border, and Law No. 3907/2011, which implements the European Union Returns Directive for those detained while already residing in Greece. The Working Group noted that Law No. 3907/2011, if properly implemented, would provide more safeguards for migrants than Law No. 3386/2005, because it included the provision of alternatives to detention.

62. Law No. 3386/2005 allows for the detention of irregular migrants pending their deportation if they have infringed the provisions of the said law (art. 76.3). Law No. 3907/2011 provides for migrants who are subject to return procedures to be detained pending their return and enforcement of the removal procedure, unless other sufficient, less coercive measures can be implemented in a specific case (art. 30.1). During its visit, however, the Working Group learned that, in practice, no "less coercive" measures exist; migrants are routinely detained also under Law No. 3907/2011. In most cases, the authorities consider that being in an irregular situation automatically constitutes sufficient reason for detention.

63. Law No. 4075/2012 amended Presidential Decree 114/2010 and Law No. 3386/2005, providing for migrants and asylum seekers to also be detained if they represent "a danger to public health" if they are "suffering from an infectious disease", "belong to groups vulnerable to infectious diseases" or are living in conditions that do not meet "minimum standards of hygiene". The Working Group concurs with the Special Rapporteur on the human rights of migrants that these measures are discriminatory and target the most vulnerable migrants, and lead to even more stigmatization. Furthermore, the majority of the

medical problems of migrants in detention are caused by or directly linked to their conditions of detention in Greece.

64. The police conduct large-scale round-up operations and temporarily detain hundreds of foreigners, sometimes in crowded and dirty conditions, while determining their residency status. The Working Group is aware of the recent findings of the Special Rapporteur on the human rights of migrants in relation to sweep operations in the context of operation Xenios Zeus, which had led to widespread detention of migrants in different parts of the country, many of whom have lived and worked in Greece for years.[1] The operation was conducted in public places, in particular in buses and metro stations. Between August and November 2012, 54,751 foreigners, including tourists, were temporarily detained. It was alleged that detention was motivated by the physical appearance of these individuals. Of that number, 4,000 foreigners were found to be in an irregular migratory situation, while the others were released.

65. Some foreigners complained to the Working Group about the deliberate destruction of their residence permits by police agents during routine identity checks in the street or during house searches.

66. The Working Group deeply regrets the policy the Government of systematically detaining all irregular migrants detected entering the territory of Greece, including families and unaccompanied children, as well as the sweep operations and subsequent detentions in the context of operation Xenios Zeus. Owing to limited detention capacity, in some parts of the country migrants are released relatively quickly and issued with an order to leave the country. This is particularly the case for families with children arriving in the Aegean islands. Several pre-removal centres were built in 2012 and 2013, and there are plans to build more, to increase the detention capacity in the country to 10,000 persons. The construction of these centres is partly financed by the European Return Fund.

67. The Working Group expresses its concern that the above situation will lead to long-term detention for most, or even all, migrants in an irregular situation detected in Greece. According to the national plan of action on asylum and migration management elaborated in 2010, the new policy will be implemented in order to "send a strong signal to third-country nationals willing to illegally enter Greece"; to "warn all immigrants who do not fall under the status of international protection that they will be arrested, detained and returned to the countries of origin".

68. The Working Group regrets the excessive duration of detention of migrants – six months, which may be extended to up to 18 months if the person refuses to cooperate or if there are delays in obtaining necessary documentation (Law No. 3907/2011, arts. 30.5 and 30.6, and No. Law 3386/2005, art. 76.3), which is the maximum provided for in the European Union Directive 2008/115/EC (see para. 37 above). In many instances, the Working Group found that the refusal to cooperate or the delays in obtaining necessary documentation could not be attributed to the migrant in question but rather to the consular authorities or legal or practical obstacles. The long duration has been justified as a deterrent mechanism for other potential migrants, whether or not a durable solution can be found in each individual case.

69. In addition, owing to a change made in October 2012 to the provisions governing the maximum length of detention for asylum seekers, such individuals may now be detained for up to 18 months pending a decision on their application in Greece (Presidential Decree 114/2012). During interviews with a significant number of actual and potential

[1] A/HRC/23/46/Add.4, para. 6.

asylum seekers, the Working Group learned that these persons were often informed that they would remain in detention for 18 months if they chose to apply for asylum.

70. Furthermore, migrants whose deportation is unlikely owing to, inter alia, the situation in their country of origin or the non-cooperation of consular authorities, are routinely detained. This practice does not seem to comply with the purpose of detention as stated in the law, namely, to prepare for deportation. Law No. 3907/2011 states that when a reasonable prospect of removal no longer exists, detention ceases to be justified and the person concerned is to be released immediately (art. 30.4). This does not seem to be implemented in practice. Law No. 3907/2011 further provides for a mechanism to deal with non-removable irregular migrants in the form of issuance of a certificate of suspension of removal (art. 24). Significant improvements have been made by amendments to articles 74 and 99 of the Criminal Code through the provisions of Law No. 4055/2012, introducing specific time limits for the duration of detention of detainees who cannot be deported (18 months). Compliance with these provisions is monitored by a judicial body.

71. The Working Group encountered instances where persons had been detained for long periods of time pending their deportation. In many cases, countries of origin are reluctant or unwilling to accept their nationals, and the implementation of the deportation order takes a long time. Frequently, the person concerned does not have valid documentation for the issuance of a passport or entry permit.

72. The Working Group found that asylum seekers were detained until their asylum procedure had been concluded. Migrants in an irregular situation are often not informed on the grounds or the length of their detention.

73. Provisions should always be made to render detention unlawful if the obstacle for identifying immigrants in an irregular situation or carrying out removal from the territory does not lie within their sphere; for example, when the consular representation of the country of origin does not cooperate or legal considerations – such as the principle of non-refoulement barring removal if there is a risk of torture or arbitrary detention in the country of destination – or factual obstacles, such as the unavailability of means of transportation, render expulsion impossible.

74. Although the administrative detention of migrants in an irregular situation does not contravene international human rights instruments,, the principle of proportionality requires that it be used as a last resort, permissible only for the shortest period of time, and that alternatives to detention be sought whenever possible.

75. The Working Group is of view that the imprisonment of a migrant or an asylum seeker for up to 18 months in conditions that are found to be even worse than in the regular prisons (see paras. 81 – 92 below) could be regarded as punishment imposed on a person who has not committed any crime. This would be a serious violation of the principle of proportionality, and may render the deprivation of liberty arbitrary. In addition, through interviews with detainees, the Working Group found that prolonged detention was often perceived by potential asylum seekers as a deterrent to discourage them from submitting an application.

76. According to domestic law, migrants in an irregular situation may be detained for up to 18 months. The maximum period of detention for asylum seekers awaiting a decision on their application was recently extended from six to up to 18 months. The Working Group encountered some instances where the obstacle for identifying or removing a particular migrant from Greek territory was not attributable to the person, including through non-cooperation of the consular representation of the third countries.

77. The Working Group also found that detainees had little or no information about why they were in detention nor of its duration. It is the position of the Working Group that

all detainees, including irregular migrants and asylum seekers, must be informed on the reasons for their detention and their rights, including the right to challenge its legality, in a language they understand, and they must have access to legal assistance.

78. As mentioned above, during its visit, the Working Group also learned about a number of round-up operations where the police would detain members of the Roma community with Greek citizens and release them soon after without charge. In this regard, the Working Group recalls that any detention on discriminatory grounds constitutes arbitrary detention, and furthermore, that detention without any legal basis also renders the detention arbitrary.

79. In 2010, the Government elaborated a plan of action on asylum and migration management (see para. 67 above), which was aimed at regulating the situation through the establishment of three different centres: first reception centres, operated by civilians; detention centres and pre-removal centres. The plan was subsequently revised in December 2012 with the objective of establishing an effective response to the migration challenges faced by the country. The revised plan focuses on the new autonomous asylum ervice, which reports directly to the Minister for Public Order and Citizens' Protection.

80. With regard to migrants in a regular situation, the Working Group was informed that there were 140,000 files pending at the Directorate of Naturalization and Migration of the Ministry of the Interior.

## D. Detention conditions

81. Although domestic law provides for proper conditions for persons deprived of their liberty, the Working Group found that, in practice, the law is not observed. In most detention facilities visited by the Working Group, the conditions were well below those required by international human rights standards, and were severely overcrowded. In detention centres for asylum seekers, the conditions were often appalling and unhygienic, and facilities were in a poor state of repair. Long-term detention was often the result of delays due to lack of cooperation of the consular authorities of the detainee's home country.

82. In this respect, the Working Group notes the decision of January 2013 of the Criminal Court of First Instance of Igoumenitsa to acquit 15 immigrants who had escaped from a detention facility mainly to flee the appalling conditions of detention they were forced to endure.

83. The Working Group often found pretrial and convicted detainees together in the same cell, or administrative detainees, including migrants in an irregular situation and asylum seekers, held with criminal detainees, in violation of relevant national and international standards. Detainees were held for months in police holding cells and border guard stations, even though these facilities were designed for a maximum stay of 72 hours. The Working Group notes that this situation also affects the proper preparation for the trial, given that defendants cannot communicate with counsel in private.

84. Migrants in an irregular situation are detained for up to several months in various establishments, such as police stations, border guard stations and coast guard facilities, which are clearly not suitable for long-term detention. Some dedicated migration detention centres do exist, some of which are converted military camps or police academies. As common standards are not applied, the detention conditions and the safeguards available vary significantly according to the facility and the location.

85. The Working Group visited a significant number of detention facilities for irregular migrants and asylum seekers. In general terms, detention conditions in all facilities were

inappropriate. Migrants were locked in their cells for most of the day, with no activities to keep them occupied. Several of the detention centres did not have an outdoor area.

86. In some of the detention facilities, the migrants had limited access to toilets; some had no artificial lighting, so that, in winter, detainees were in the dark as of the early afternoon. Most of the detention facilities visited lacked heating and hot water, and detainees complained about insufficient and poor quality food, lack of soap and other hygiene products, and of insufficient clothing, shoes and blankets. The Working Group met with several detainees who had visible health problems but who had not received appropriate medical care. It noted the urgent need for specialized staff in each detention facility, including doctors, nurses, psychologists, social workers and interpreters.

87. The detention centres in the Evros region, particularly Fylakio, were overcrowded and run by the police. Although the detention centre for migrants and asylum seekers in Thessaloniki has a maximum capacity of 54 persons, it was holding 96 foreigners at the time of the visit of the Working Group.

88. It should be noted that, in 2012, the rate of detention of migrants in an irregular situation was 22.63 per cent lower than in 2011 (76,878 persons in 2012 against 99,368in 2011). In 2013, detention of migrants in an irregular situation dropped by a further 44.06 per cent (with detentions down to 43,002).

89. In general terms, overcrowding in Greek prisons has increased and is now a chronic problem. At 1 September 2011, Greek prisons were at a 151.7 per cent of their maximum capacity, with 12,479 inmates (including 4,254 pretrial detainees) crammed into 8,224 available places. The number of inmates continues to rise. According to the Ministry of Justice, Transparency and Human Rights, in January 2010, Greek prisons held 11,364 inmates. By 1 November 2012, this number had risen to 13,147 (including711 women detainees).

90. At the time of the visit of the Working Group, Thessaloniki prison held 592 inmates (including 385 in pretrial detention), even though its maximum capacity is 280.. The penal population included persons of 31 different nationalities.

91. The Korydallos and Halkida prisons reportedly rejected additional inmates owing to serious overcrowding. Korydallos has room for 800 inmates, but was holding 2,345 detainees in very poor conditions of detention at the time of the visit of the Working Group. Although Komotini prison has a maximum capacity of 100 inmates, the Working Group found 327 detainees during its visit, including 74 in pretrial detention. In many detention centres, there is no separation between pretrial and convicted detainees.

92. In one police station visited in Thessaloniki, the Working Group found 10 persons detained on suspicion of having committed common offences, as well as 90 migrants in an irregular situation.

## E. Procedural safeguards

93. According to the Government, representatives of UNHCR and non-governmental organizations dealing with migration issues are granted access to detention facilities where they may interact freely with migrants and provide them with legal assistance. The Working Group received information, however, that detainees were allowed limited contact with their families, limited access to legal assistance and consular services and little or no professional interpretation services.

94. In general, the detainees whom the Working Group met had little or no information in a language they could understand about the reasons for detention, its duration or the right

to challenge their detention and deportation, despite the fact that article 76.3 of Law No. 3386/2005 provides for the right to be informed about the reasons for detention in a language that that the detainee understands. While some detention centres had information posted on the walls near the entrance or in booklets, information was rarely available inside the cells or anywhere else. Those who had applied for asylum often had no information about the status of their case, and others could not apply for asylum from the detention facility.

95. According to deliberation No. 5, Principle 1 of the Working Group, any asylum seeker or immigrant, when held for questioning at the border, or inside national territory in the case of illegal entry, must be informed at least orally and in a language that he or she understands of the nature of and grounds for the decision refusing entry at the border, or permission for temporary residence in the territory, that is being contemplated with respect to the person concerned. In Principle 2 of deliberation No. 5, the Working Group pointed out that any asylum seeker or immigrant must have the possibility, while in custody, of communicating with the outside world, including by telephone, fax or electronic mail, and of contacting a lawyer, a consular representative and relatives.

96. Migrants may be detained on the decision of the competent police authority (Law No. 3386/2005, art. 76.2); no automatic judicial review of the decision is provided for. Although migrants may present an objection to their detention (Law No. 3386/2005, art. 76.3 and Law No. 3907/2011, art. 30.2), it is not automatic, and no direct review of the lawfulness of the detention is provided for.

97. Moreover, objections must to be submitted in writing and drafted in Greek. Access to an interpreter and lawyer is not guaranteed, which makes any objection to the detention virtually impossible, particularly given that detention and deportation orders are written in Greek.

98. Law No. 3907/2011 introduced an automatic judicial review of the legality of detention (art. 30.3); however, it regulates only the extension of detention and not the detention per se. The review is conducted automatically, with no reference to the specificities of each case, and the fact that the migrant has not yet been expelled constitutes sufficient grounds for the judge to extend the period of detention.

99. In its deliberation No. 5, Principle 6, the Working Group stated that the decision must be taken by a duly empowered authority with a sufficient level of responsibility and must be founded on criteria of legality established by the law. Furthermore, in Principle 8 of the same deliberation, the Working Group specified that notification of the custodial measure must be given in writing, in a language understood by the asylum seeker or immigrant, stating the grounds for the measure; it should set out the conditions under which the asylum seeker or immigrant must be able to apply for a remedy to a judicial authority, which will make a prompt decision on the lawfulness of the measure and, where appropriate, order the release of the person concerned.

100. Some of the migrants who had engaged private lawyers complained that the lawyers would simply take their money and not follow up on their cases. The Working Group heard these allegations from several migrants in different detention centres. It urges the Greek authorities to take these allegations seriously and to find a solution to the problems relating to effective legal representation of detained migrants.

101. Although the treatment of vulnerable groups (such as women, single-parent families and unaccompanied minors) is a subject of particular concern for the relevant services, the Working Group notes with concern the insufficient training and sensitization of staff in detention centres on international human rights law principles and standards, as well as on principles relating to the rights and treatment of persons deprived of their liberty, with respect to both detention conditions and safeguards.

102. Regular independent monitoring of all detention facilities is crucial to ensure the implementation of international standards. In this respect, the Working Group welcomes the recent ratification by Greece of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment. The Ombudsman's office, as the designated national preventive mechanism under the Optional Protocol, should conduct regular unannounced visits to detention facilities throughout the territory of Greece, including all places where migrants are deprived of their liberty. Civil society organizations should also be guaranteed access to all places where migrants are detained.

## F. Alternatives to detention

103. As noted above, despite the fact that Law No. 3907/2011 provides for the detention of migrants only when less coercive measures cannot be implemented, in practice, no such measures exist, and irregular migrants are systematically detained. The Working Group strongly urges the Greek authorities to undertake an individual assessment of the necessity of detention in each case, in accordance with international human rights standards and its own laws. Non-custodial measures should always be considered before detention.

## G. Unaccompanied minors

104. Under Greek law, adolescents aged between 13 and 18 years may be held criminally responsible, even though their acts will always be considered misdemeanours rather than felonies. The law requires that educational and therapy measures be preferred instead of correctional ones. Minors are detained solely in the case of commission of serious crimes. Their detention is always under the supervision of a prosecutor. Individuals aged between 18 and 21 years are considered young adults.

105. Law No. 220/2007, which also incorporates European Union Directive 9/2003/EC, applies to unaccompanied minors, stipulating that a prosecutor is to be notified of the case whether or not the minor has submitted an asylum application. The prosecutor is appointed temporary guardian; at a later stage, in cooperation with social services and non-governmental organizations, another person, usually a social worker, will be appointed the permanent guardian.

106. During its visit, however, the Working Group found that unaccompanied minors were often not properly registered and were systematically detained. It notes with concern that the current national legislation does not provide for a statutory prohibition of the detention of minors. According to the Government, in practice, unaccompanied minors are, after some weeks in detention centres, placed under the responsibility of the Ministry of Labour, Social Security and Welfare and transferred to a guest house for minors. During its visit, however, the Working Group found that, owing to the limited capacity of existing reception facilities, unaccompanied minors often remained in detention for a prolonged period of time waiting for a place to become available.

107. Unaccompanied minors who do not apply for asylum or who were refused asylum and not granted protective status are subject to deportation or to recurrent detention.

## H. Conscientious objection

108. The Working Group was informed that conscientious objectors were frequently prosecuted. On 1 February 2012, the Athens Military Court convicted Avraam Pouliasis to six months of imprisonment, suspended for three years, for objecting to compulsory military service. The Court found him guilty of failing to serve compulsory military service

at any time from 11 September 1998 until 1 January 2008, when he turned 45. Mr. Pouliasis appeared personally before the Court to hear its decision, but did not file an appeal before the Military Court of Appeals. According to the Government, Mr. Pouliasis could have opted to serve alternative military service for conscientious objectors, but had chosen not to do so.

# V. Conclusions

109. **The Working Group recognizes that Greece is has endured a difficult economic and social period owing to the financial crisis, which has forced the Government to implement austerity measures a number of times without adequate international support.**

110. **The Working Group was informed of the positive legislative changes made in relation to the issue of deprivation of liberty in Greece. It encourages the Government to ensure that such developments are accompanied by effective implementation measures in strict compliance with international human rights standards. The new asylum service, appeals authority and first reception service are also positive developments.**

111. **With regard to criminal justice, despite the constitutional provision establishing limits for pre-trial detention (one year in the case of felonies, six months in the case of misdemeanours), the Working Group observed that accused persons often spent relatively long periods in pretrial detention, even several years. The Working Group found that this is one of the main reasons for the serious overcrowding witnessed in Greek prisons, which is now a chronic problem.**

112. **Arbitrary detention in Greece is particularly linked to migration and to the mass arrival of undocumented migrants. This phenomenon has placed great pressure on the police and border guards.**

113. **The Working Group is of the view that much remains to be done to ensure full respect for the human rights of migrants and asylum seekers in Greece. A proper network for the reception of arrivals, adequate physical and sanitary conditions in the centres and adequate procedures for repatriation seem to be lacking.**

114. **The Working Group found that a detention period of 18 months for undocumented migrants was excessive, particularly in the light of the very harsh conditions in detention centres, including those in the Evros region.**

115. **The imprisonment of a migrant or an asylum seeker for up to 18 months in conditions that are usually found to be even worse than in the regular prisons could be considered a punishment imposed on a person who has not committed any offence. This appears to be a serious violation of the principle of proportionality and may render the deprivation of liberty arbitrary.**

116. **Failure to apply alternatives to detention, lack of effective judicial review and the excessive length of detention may also render the detention of an individual arbitrary.**

117. **With regard to the vast number of round-up operations leading to the detention by the police of foreigners and members of the Roma community (including those who are Greek citizens), the Working Group recalls that any detention on discriminatory grounds constitutes arbitrary detention and furthermore, that detention without any legal basis may also render the detention arbitrary.**

# VI. Recommendations

118. **In the light of the information received and the concerns expressed, the Working Group make recommends that the Government of Greece:**

**(a) Reform the judicial system to guarantee that all persons in pretrial detention receive a fair and speedy trial;**

**(b) Consider the possibility of decriminalizing certain offences, reducing prison sentences, and applying non-custodial measures in order to combat the severe overcrowding in prisons and the inappropriate utilization of police stations to hold detainees for periods beyond 72 hours;**

**(c) End the policy of systematic detention of all migrants in an irregular situation, and instead explore alternatives to detention. Detention should be a measure of last resort, limited to cases where there is a risk of the person absconding or when the person poses a threat to her or his own security or public security. The duration of detention should be limited to the minimum time necessary to carry out removal or other proceedings. Less coercive measures should always be considered before resorting to detention, in accordance with Law No. 3907/2011;**

**(d) Significantly improve detention conditions and procedural safeguards, and develop appropriate regulations for all detention facilities, in accordance with international human rights standards. In particular, it should:**

**(i) Systematically inform detained migrants in writing, in a language that they understand, of the reason for their detention, its duration, their right to have access to a lawyer, the right to promptly challenge their detention, and to seek asylum;**

**(ii) Ensure that all migrants deprived of their liberty are able to contact promptly their family, consular services and a lawyer, free of charge;**

**(iii) Ensure that all detained migrants have access to proper medical care, an interpreter, adequate food and clothes, hygienic conditions, adequate space to move around and access to outdoor exercise.**

119. **The Working Group also recommends that:**

**(a) At the time of detention, detainees be provided in writing, in a language they understand, with the grounds for their detention, clearly and exhaustively defined;**

**(b) Detainees be provided with a written explanation of their rights and how to exercise them.**

120. **The legality of detention must be open for challenge before a court, and a regular review should be conducted within a fixed time limit. Each decision to detain should be reviewed to confirm its necessity and compliance with international legal standards by means of a prompt oral hearing by a court or similar competent independent and impartial review, accompanied by appropriate legal aid. In the event that continued detention is authorized, detainees should be able to initiate further challenges against their detention.**

121. **Detainees should be held in special immigration detention centres in conditions appropriate for their status, and not together with persons charged with or convicted of criminal offences (unless so charged or convicted themselves).**

122. **Detainees should be given adequate access to their legal representatives, relatives and officials of UNHCR.**

123. **The Government should limit the use of detention to appropriate cases, such as of asylum seekers whose application has been rejected after the asylum determination process (namely, when the incentive to abscond has increased) or where removal is imminent and there are reasons to believe it cannot be effected unless the individual is detained. The power to detain should not be exercised if the person concerned is, on the basis of substantiated evidence, fully integrated into the society from which that person's removal is sought.**

124. **Alternative and non-custodial measures, such as reporting requirements, should always be considered before resorting to detention.**

125. **Detaining authorities should be required to establish a compelling need to detain that is based on the personal history of each individual asylum seeker.**

126. **Any review body should be independent of the detaining authority.**

127. **Specialized non-governmental organizations, UNHCR and legal representatives should have access to all places of detention.**

128. **All staff members of detention facilities should receive training on the special situation and needs of asylum seekers in detention.**

129. **Effective measures should be taken to ensure that migrants have full access to lawyers and interpreters to appeal deportation decisions, and to prevent the refoulement of persons in need of international protection.**

130. **The Government should refrain from detaining unaccompanied minors and families with children, in conformity with the principles of the best interests of the child and of family unity.**

131. **The Government should continue to facilitate, where possible, the voluntary return of migrants who are willing to return to their countries, as opposed to deportation proceedings, in full accordance with international human rights law.**

132. **Lawyers and civil society organizations should be ensured full access to all detention facilities, and a systematic, independent monitoring system should be established for them.**

133. **All detained persons claiming protection concerns should be adequately informed of their right to seek asylum and be able to file an asylum application and communicate with UNHCR, lawyers and civil society organizations.**

134. **The Government should strengthen, through the provision of competent staff and resources, the Office of the Ombudsman and the National Commission for Human Rights in order to allow them to effectively accomplish their mission of human rights protection and promotion for all, including migrants, regardless of their administrative status, including by undertaking regular unannounced visits to detention facilities throughout national territory.**